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BESCOM

BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

(Wholly owned Government of Karnataka Undertaking)

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General Manager (DAS & SG)
BESCOM Integrated Control Centre
23rd Main, 7th Cross, 2nd Sector,
HSR Layout, Opp to BWSSB office
Bangalore-560102

No. BESCOM/BC-19/GM(DAS)/DGM-5/2023-24/ 2075 **Date:** 26-02-2024

Clarification to Pre-bid Queries

Sub: Clarification to pre-bid queries pertaining to "Project Management Consultancy services to BESCOM for implementation of Upgradation of DAS in Bengaluru city Project"

Ref:

1. Tender Enquiry No: BESCOM/2023-24/SE0105 dated 12.02.2024.
2. Pre-bid queries received from firm vide letter dated 20.02.2024.

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Subsequent to the pre-bid queries received by BESCOM vide letter cited in reference, clarifications to the queries are enclosed as Annexure-1.

All the other terms and conditions of the tender remain unaltered.

General Manager (DAS, SG & TIC)
BESCOM
26/02/24

ANNEXURE-1 CLARIFICATION TO PRE-BID QUERIES

Sl. No.	Section no / Clause No./ Page No.	Clause	Query / Clarification Sought	BESCOM Clarification
1.	Section: 03 Clause No: 22 Page No.09	**LIMITATION OF LIABILITIES** Except in cases of gross negligence or willful misconduct: a) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Consultant to pay liquidated damages to BESCOM, and b) The aggregate liability of the Consultant to BESCOM, whether under the Contract, in tort, or otherwise, shall not exceed 10% of the amount specified in the Contract Price.	It is requested to put capping on the Limitation of Liability or please add the following clauses: Client (and any others for whom Services are provided) may not recover from contractor, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services. If contractor is liable to Client (or to any others for whom Services are provided) under this Agreement or otherwise in connection with the Services, for loss or damage to which any other persons (Other than contractor firm, contractor persons, Support Providers) have also contributed, contractor's liability to Client shall be several, and not joint, with such others, and shall be limited to contractor's proportionate share of that total loss or damage, based on contractor's (Including contractor firm, contractor persons, Support Providers) contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of contractor's proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment. "For the avoidance of doubt, the foregoing shall not in any way alter contractor's responsibility for the performance of the Services by contractor's subcontractors (including other contractor Firms) ." Client shall make any claim relating to the Services or otherwise under this Agreement no later than three years after discovery of the cause of action in relation to such claim.	Tender conditions remain

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Sl. No.	Section no / Clause No./ Page No.	Clause	Query / Clarification Sought	BESCOM Clarification
2.	Section: 03 Clause No: 55 Page No. 22	**Confidentiality** BESCOM and the Consultant shall keep confidential and shall not, without the written consent of the other Party here to, divulge to any Third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. The Consultant, their Sub-Consultant, and the Personnel of either of them shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or BESCOM business or operations without the prior written consent of BESCOM. A Non- Disclosure agreement as per prevailing data sharing policy of BESCOM shall be executed between the parties before signing of contract and any information is shared.	It is requested to add the below Clause: Except as otherwise permitted by this Agreement, neither of the parties may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Parties may, however, disclose such confidential information to the extent that it: (a) is or becomes public other than through a breach of this Agreement, (b) is subsequently received by the receiving party from a third party who, to the receiving party's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information, (c) was known to the receiving party at the time of disclosure or is thereafter created independently, (d) is disclosed as necessary to enforce the receiving party's rights under this Agreement, or (e) must be disclosed under applicable law, legal process or professional regulations. These obligations shall be valid for a period of 3 year from the date of termination of this Agreement. In case the term of survival obligation goes beyond 3 years, SLQ approval is required.	Tender conditions remain

Sl. No.	Section no / Clause No./ Page No.	Clause	Query / Clarification Sought	BESCOM Clarification
3.	Section: 03 Clause No: 55 Page No.22.	**Intellectual Property Right (IPR)** Confidentiality BESCOM and the Consultant shall keep confidential and shall not, without the written consent of the other Party here to, divulge to any Third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. The Consultant, their Sub-Consultant, and the Personnel of either of them shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or BESCOM business or operations without the prior written consent of BESCOM. A Non- Disclosure agreement as per prevailing data sharing policy of BESCOM shall be executed between the parties before signing of contract and any information is shared.	It is requested to add this in the clause: contractor may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that contractor own in performing the Services. Notwithstanding the delivery of any Reports, contractor retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers that contractor compile and retain in connection with the Services (but not Client Information reflected in them). Upon payment for the Services, Client may use any Materials included in the Reports, as well as the Reports themselves as permitted by this Agreement.	Tender conditions remain

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Sl. No.	Section No. / Clause No./ Page No.	Clause	Query / Clarification Sought	BESCOM Clarification
4.	Section: 03 Clause No: 52 Page No.20	**TERMINATION OF CONTRACT** **52.1 By BESCOM** BESCOM may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 52.1 and sixty (60) days' in the case of the event referred to in (e): a. if the Consultants do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days of receipt after being notified or within such further period as BESCOM may have subsequently approved in writing; b. if the Consultants (or any of their Members) become insolvent or bankrupt; c. if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or d. if the consultant, in the judgment of BESCOM has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the	It is requested to add the following termination provision: "Contractor may terminate this Agreement, or any particular Services, immediately upon written notice to Client if contractor reasonably determine that contractor can no longer provide the Services in accordance with applicable law or professional obligations."	Tender conditions remain

		execution of a contract to the detriment of GOK, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive GOK of the benefits of free and open competition. e. if BESCOM, in its sole discretion and for any reason whatsoever, decides to terminate this Contract. **52.2 By the Consultant** The Consultants may terminate this Contract, by not less than thirty (30) days' written notice to BESCOM, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause 52.2: a. if BESCOM fails to pay any monies due to the Consultants pursuant to this Contract and not subject to dispute pursuant to Clause E hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue; b. If BESCOM is in material breach of its obligations pursuant to this Contract and has not remedied the same with in forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by BESCOM of the Consultants' notice specifying such breach; c. if, as the result of Force Majeure, the Consultants are unable to perform the services for a period of not less than sixty (60) days.		

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Sl. No.	Section No. / Clause No./ Page No.	Clause	Query / Clarification Sought	BESCOM Clarification
5.	Section: 03 Clause No: 45 Page No.18	**INSURANCE** The Contractor a) shall at its own expense take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at their (or the Sub-Consultant', as the case may be) own cost but on terms and conditions approved by the BESCOM, insurance against the risks, and for the coverage; and b) at BESCOM's request, shall provide evidence to the BESCOM showing that such insurance has been taken out and maintained and that the current premiums have been paid.	It is requested to write the clause in the below suggested language: **Suggested Language:** "Contractor shall during the term of this Agreement maintain sufficient professional indemnity insurance as required by law, regulations and professional obligations applicable in India."	Tender Conditions remain
6.	Section: 03 Clause No: 49 Page No.18	**FORCE MAJEURE** Force Majeure means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays BESCOM or the Consultant in the performance of their obligation under this Contract, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the affected Party and could not have been avoided if the affected Party had taken reasonable care or complied with prudent utility practices. • Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, war embargo,	It is recommended to add below clause to under Force Majeure to facilitate remote working: (i) To the extent that the provision of the Services is impacted by a pandemic (including COVID-19) and any reasonable concerns or measures taken to protect the health and safety interests of either Party's personnel, the Parties will work together to amend the Agreement to provide for the Services to be delivered in an appropriate manner, including any resulting modifications with respect to the timelines, location, or manner of the delivery of Services. (ii) Where Contractor Personnel are required to be in present at Client's premises, Contractor will use reasonable efforts to provide the Services on-site at [Client] offices,	Tender Conditions remain

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		or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years, or • Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, epidemics, employee strikes or • Any event or circumstance of a nature analogous to any of the above.	provided that, in light of a pandemic the parties agree to cooperate to allow for remote working and/or an extended timeframe to the extent (i) any government or similar entity implements restrictions that may interfere with provision of onsite Services; (ii) either party implements voluntary limitations on travel or meetings that could interfere with provision of onsite Services, or (iii) an contractor resource determines that he or she is unable or unwilling to travel in light of a pandemic-related risk.	
7.	Section: 03 Clause No: 06 Page No.04	**USE OF CONTRACT DOCUMENTS AND INFORMATION** 6.1. The Contractor shall not, without BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of BESCOM in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance. 6.2. The Contractor shall not, without BESCOM's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract. 6.3. The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract, or descriptions of the site, dimensions,	It is requested to add the below clause: Any information, advice, recommendations or other content of any reports, presentations, or other communications we provide under this Agreement ("Reports"), other than Client Information, are for Client's internal use only (consistent with the purpose of the particular Services) including Client's board of directors, its audit committee, or its statutory auditors and not for disclosure externally outside your organization. Client may not rely on any draft Report and consultant shall not be required to update its Final Report.	Tender Conditions remain

		quantity, quality or other information, concerning the works unless prior written permission has been obtained from BESCOM. 6.4. Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of BESCOM and shall be returned (in all copies) to BESCOM on completion of the Contractor's performance under the Contract if so required by BESCOM.		
8	Section: 3 Clause No: 31 Page No.13	**31. TERMS OF PAYMENT** Payment will be processed on monthly basis throughout the contract duration against submission of duly signed monthly invoices in triplicate and timesheet of individual consultant.	It is requested to include the following Clause: DISCOM shall pay the Consultant's invoices within thirty (30) days after receipt by DISCOM of such itemized invoices with supporting documents	Tender Conditions remain

General Manager (Ele)
DAS & SG, BESCOM
26/02/24